

HOUSE No. 459

By Ms. Jehlen of Somerville, petition of Patricia D. Jehlen and others relative to wages and benefits of part-time public employment by employees of temporary agencies and contractors. Public Service.

The Commonwealth of Massachusetts

PETITION OF:

Patricia D. Jehlen
Anne M. Paulsen

Benjamin Swan
William Lantigua

In the Year Two Thousand and Five.

AN ACT REQUIRING FAIR WAGES AND BENEFITS FOR PART-TIME PUBLIC EMPLOYEES.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 SECTION 1. Chapter 23 of the General Laws is hereby amended
2 by adding after section 11G the following new section:—

3 Section 12. (a) The following words and phrases as used in this
4 section shall have the following meaning unless the context
5 clearly requires otherwise.

6 (1) “Benefits” include but are not limited to accrual of
7 seniority, credit for length of service, holidays, vacations, sick
8 leave and other leave, disability and health insurance, health and
9 welfare, and pension benefits.

10 (2) “Client company” means an enterprise that receives services
11 or functions from another enterprise and that meets the criteria for
12 a joint employer.

13 (3) “Contingent job” means any job in which an individual does
14 not have an explicit or implicit contract for long-term full-time
15 employment. This includes:

16 (a) “Casual employment”, which means work scheduled on an
17 occasional or intermittent basis, without a regular schedule;

18 (b) “Contractor employment”, which means employment in
19 which a worker is employed by a company that has contracted
20 with a client company to provide services or functions;

21 (c) “Day labor employment”, which means employment in
22 which a worker is hired for a day or on a day-to-day basis to per-
23 form unskilled or semi-skilled tasks;

24 (d) “Home-based employment”, which means employment in
25 which a person produces goods or delivers services in or about a
26 home, apartment, tenement, or room in a residential establishment
27 for an employer who suffers or permits such production or service
28 delivery, regardless of the source (whether obtained from an
29 employer or elsewhere) of the materials used by the home worker
30 in such production.

31 (e) “Leased employment”, which means employment in which
32 an individual performs services for a client company through a
33 leasing organization where the provision of the individual’s serv-
34 ices is pursuant to an agreement between the client company and
35 the leasing organization;

36 (f) “On-call employment”, which means employment in which
37 a worker reports to work only when asked by her/his employer to
38 do so, as opposed to having a regular schedule;

39 (g) “Seasonal employment”, which means a job which provides
40 no work for at least 90 days;

41 (h) “Temporary agency employment”, which means work per-
42 formed by a person who is hired and remunerated by an agency
43 which provides the worker to a client company, where there is no
44 implicit or explicit contract for long-term employment;

45 (i) “Temporary direct hire employment”, which means work
46 performed by a person who is hired and remunerated by the com-
47 pany for which the worker provides services, where there is no
48 implicit or explicit contract for long-term employment;

49 (j) “Temporary employment”, which means work with an estab-
50 lished employment period of one year or less;

51 (4) “Covered employee” means any individual who performs a
52 service for remuneration unless said individual meets the criteria
53 of an independent contractor as defined in this section.

54 (5) “Employer” includes any individual, organization
55 (including the commonwealth and all of its political subdivisions),
56 partnership, association, trust, estate, joint stock company, insur-

57 ance company or corporation, whether domestic or foreign, or
58 receiver or trustee in bankruptcy, or the legal representative of a
59 deceased person, who has one or more individuals in his or her
60 employment during any day or portion of any day.

61 (6) “Entry level job” means a job that requires one year or less
62 of training.

63 (7) “Full-time employment” means any job with regularly
64 scheduled work of more than 32 hours per week, or greater than
65 64 hours in a biweekly period.

66 (8) “Health care costs” means the total cost of health insurance
67 premiums and out-of-pocket health care expenses.

68 (9) “Independent contractor”, which means any worker who
69 meets all of the following criteria: (i) the individual is free from
70 direction and control over the performance of the work; (ii) the
71 service is performed either outside the usual course of the busi-
72 ness for which it is performed or is performed outside of all places
73 of business of the enterprise for which it is performed; and (iii)
74 the individual is customarily engaged in an independent trade,
75 occupation, profession or business. The failure to withhold federal
76 or state income taxes, unemployment compensation or workers
77 compensation from an employee’s wages shall not be used for the
78 purposes of making a determination under this section.

79 (10) “Joint employer” means a contractor and a client where the
80 employees of the contractor perform work that is an ongoing com-
81 ponent of the client’s enterprise and in which one or more of the
82 following exists: (i) the contractor’s employees are required to
83 follow the client’s instructions concerning the specifics of how
84 and when the services are to be performed; (ii) the contractor’s
85 employees perform the services on a regular basis on premises
86 owned or managed by the client; or (iii) the capital goods used by
87 the contractor’s employees in performing the services in question
88 are provided by, or substantially financed, directly or indirectly by
89 the client, provided, however, that no contractor and client shall
90 be considered a joint employer unless one of the two entities
91 receives fifty percent or more of its funds directly or indirectly
92 from the commonwealth.

93 (11) “Part-time employment”, which means regularly scheduled
94 work, which is less than the full time, work schedule customary
95 for the individual’s occupation.

1 SECTION 2. Chapter 149 of the General Laws is hereby
2 amended by inserting after section 105D of said chapter the
3 following new section:—

4 Section 105E. (a) Words and phrases used in this section shall
5 have the meanings stated in section twelve (a) of chapter 23,
6 unless the context clearly requires otherwise.

7 (b) No employer, including joint employers at a client work
8 site, shall discriminate in any way in the payment of wages as
9 between full-time and part-time employees whether or not such
10 employees are employed in permanent or contingent jobs; or
11 between permanent and contingent employees; provided, however,
12 that variations in rates of pay shall not be prohibited when based
13 upon a difference in seniority. For the purpose of determining the
14 wages paid to full-time employees which will be used to deter-
15 mine whether the employer is discriminating against contingent
16 workers or part-time workers, full-time wages shall be deemed to
17 be the gross hourly wages of similarly situated employees, plus a
18 thirty percent surcharge. Such surcharge shall be deemed to be
19 paid to the contingent employee or part-time employee if it is
20 included directly in wages or offered as part of the cost of health,
21 welfare and retirement benefits.

22 (c) Nothing in this section shall be construed to diminish or
23 otherwise affect the requirements, guarantees or protections under
24 any bargaining agreement, company policy or state or federal law
25 which provides for greater or additional benefits than those
26 required under this section.

1 SECTION 3. Section 149 of the General Laws is hereby
2 amended by inserting the following new section 105F — Any
3 employer, as defined in section one hundred and five E of chapter
4 one hundred and forty-nine of the General Laws, who receives in
5 excess of twenty-five thousand dollars per year in funding or pay-
6 ment for services under any contract with the commonwealth shall
7 be subject to rules and regulations, promulgated by the office of
8 purchased services, regarding the employment of workers in con-
9 tingent jobs as defined in said section one hundred and five E.
10 These rules shall include:

11 (a) a cap on the percentage of contingent jobs and on the per-
12 centage of the total payroll that may be used to hire workers in

13 contingent jobs, which cap shall be no greater than fifty percent of
14 the average number of contingent jobs found in the private sector;
15 no more than 25% of the funds derived from a contract with the
16 state may be used for the payment of wages for contingent jobs.
17 (b) a requirement that any employer receiving such funding or
18 payment for services shall pay a wage surcharge to each employee
19 equal to the share of health insurance costs paid by the Common-
20 wealth.

1 SECTION 4. Section 150 of chapter 149 of the General Laws is
2 hereby amended by striking the first paragraph of said section and
3 substituting therefore the following:—
4 Any employee claiming to be aggrieved by a violation of
5 section 105E, 105F, 148, 148A, 148B, 150C, 152, 152A or 159C
6 or section 19 of chapter 151 may, at the expiration of ninety days
7 after the filing of a complaint with the attorney general, or sooner,
8 if the attorney general assents in writing, and within three years of
9 such violation, institute and prosecute in his own name and on his
10 own behalf, or for himself and for others similarly situated, a civil
11 action for injunctive relief and any damages incurred, including
12 treble damages for any loss of wages and other benefits.